IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1907 of 2004

THE ORIENTAL INSURANCE CO LTD.
V/S
BANSHILAL & ORS

Mr. LD KHATRI, for the appellant / petitioner

Date of Order : 25.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant. It is contended by learned counsel for the appellant, that Insurance cover note had already been cancelled at that time itself, and therefore, appellant could not be held liable for compensation.

Suffice it to say, that the learned trial court has partly decided the issue in favour of appellant, by holding, that even if the cover note is cancelled, the insurer is liable for third party, and may take appropriate proceedings against the owner. Significantly, the learned Tribunal has found, that there is nothing on record to show, that any information about the cancellation of cover note was given to R.T.O.

I have read the statement of NAW-1, who is Senior Branch Manager. He has deposed that accident was not caused by vehicle No.6139, but was caused by vehicle No.7439, and cover note no.158615 was issued for vehicle no.6139, and the policy issued pursuant thereto is Ex.A-1. Then he has stated, that on the date of accident, in view of vehicle no.7439, being not insured with the company, the company is not liable. Significantly, he has not stated a word about the issuance of cover note for the vehicle no. 7439, and its cancellation, much less the reasons therefor, and has also not proved the cover note/notes, said to have been issued and cancelled. It is unfortunate that on cross-examination, questions were put to the witness, and he deposed, that company had received the cheque for the premium, but on the request of

the owner, cover note was cancelled. He has deposed, that it is correct, that after receiving the cheque, cover note was issued and was subsequently cancelled. He has also admitted, that no notice for cancellation was issued to the owner or the insured or RTO. He has not even deposed as to when the cover note was cancelled.

In these circumstances, I am not inclined to accept the request of learned counsel for the appellant, that instead of giving liberty to the appellant to take appropriate proceedings against the insurer, the appellant should be given right, to straight-way recover the amount, from the insured, as the request proceeds on the assumption that the cover note was lawfully cancelled, while from the above findings it is clear that the appellant has failed to prove that the cover note was cancelled in accordance with law. It is a different story that the learned Tribunal has proceeded on the basis that even in the event of cancellation of the cover note the insurer is liable to the third parties.

The appeal thus has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/